

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE LITIGATION

MDL No. 1456

Civil Action No. 01-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO:

ALL CLASS ACTIONS

**TRACK 1 DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION TO MODIFY PRETRIAL ORDER AUGUST 21, 2006**

The Track 1 Defendants respectfully submit this response to Plaintiffs’ Motion to Modify Pretrial Order August 21, 2006 (“Plaintiffs’ Motion”).

Defendants do not entirely understand the reasoning underlying Plaintiffs’ Motion. As Plaintiffs note, the Court has already granted Defendants’ motion to amend the August 21, 2006 Pretrial Order, which motion requested that Defendants’ direct-witness affidavits be due “one week prior to the anticipated start of defendants’ case in chief.” (Track 1 Defs.’ Mot. to Amend Pretrial Order at 1 [Docket No. 3125].) Thus, Plaintiffs’ are incorrect that the Court “set no date for defendants’ filings.” (Pls.’ Mot. at 1.)

Nevertheless, to the extent that the Court considers it appropriate to provide some additional time in advance of the testimony of a given witness, Defendants propose that the written direct testimony for each witness be due at least ten days prior to the start of the week

during which that witness is expected to testify.¹ This would provide both sides ample time during which to review the testimony of each witness and prepare any cross-examination.

Defendants have no objection to Plaintiffs' request that they be allowed to file on October 31, 2006, the direct testimony of the unnamed witness who is dealing with a personal matter.

Respectfully Submitted,

THE TRACK 1 DEFENDANTS

/s/ John T. Montgomery

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¹ This requirement would not apply to each side's "tutorial" witness, each of which will be presented live.

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2006, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Eric P. Christofferson
Eric P. Christofferson